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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/09
 SPONSOR HTRC LAST UPDATED 03/21/09 HB CS/552/aSF1#1
 SHORT TITLE Infrastructure Development Act SB _____
 ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$0.1		Recurring	Local Governments

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1			Recurring	Local Government Division

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB820, HM90

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Finance Authority (NMFA)
 Department of Finance and Administration (DFA)
 Attorney General (AGO)
 State Land Office (SLO)

No Response Received From

New Mexico Municipal League (NMML)
 Association of Counties

SUMMARY

Synopsis of SFI#1 Amendment

The House Taxation and Revenue substitute for House Bill 552 was amended on the Senate Floor. The amendment removes “economic development” from the list of allowable projects and limits the maximum mill levy to the maximum constitutional rate for operating expenses. The

amendment also requires the proposed infrastructure to be in compliance with the local government master plan.

The New Mexico Constitution limits rates that have not been approved by voters to 20 mills. Statutes distribute the 20-mill authority as follows: municipalities may impose up to 7.65 mills; counties may impose a maximum of 11.85 mills, while school districts may impose a maximum of .5 mills for operating purposes. The State of New Mexico may impose debt obligations funded by property taxes, when approved by voters, totaling no more than 1 percent of statewide net taxable value. Municipalities and counties may generally impose debt totaling no more than 4 percent of assessed value when approved by voters, while school districts are limited to debt totaling 6 percent of net taxable value within their jurisdictions. Although a number of counties, municipalities and virtually all of the state's school districts are imposing their maximum operating rates, few jurisdictions have imposed the maximum debt levies.

Synopsis of HTRC Substitute

The House Tax and Revenue Committee substituted House Bill 552. The substitute allows the creation of new political subdivisions called Infrastructure Development Zones (IDZ) for the purpose of coordinating and financing infrastructure improvements and services. An IDZ can be within a municipality or county or overlap multiple jurisdictions. The IDZ can also be non-contiguous provided the included parcels are within three miles of each other. The substitute adds language regarding governing body approval which was missing from the original bill.

The types of services provided by an IDZ and that must be included in the service plan approved by the governing body can include

- Sanitary sewage systems
- Drainage and flood control systems
- Water systems
- Highways, streets, roadways, bridges, crossing structures and parking facilities
- Trails, parks and open space
- Landscaping
- Public buildings, public safety facilities and fire protection and police facilities
- Electrical and energy generation, transmission and distribution facilities
- Natural gas distribution facilities
- Lighting systems
- Telecommunications and cable lines and equipment
- Traffic control systems
- Library and other public educational facilities
- Solid waste and garbage collection
- Economic development (**removed by SF#1 amendment**)

An IDZ can be established by the lesser of 30 percent or 400 taxpaying electors in the proposed area petitioning the appropriate governing body (“approving authority”). If the area is mostly in a single county, outside the municipal boundaries, then the county is the appropriate body. If the area is mostly in a municipality than that is the appropriate body. Taxpaying electors are persons that own taxable real or personal property within the zone and does not have to be a resident of the zone. The petition must include the boundaries of the area, description of proposed services, a financial plan including a first year operating budget, a schedule of proposed debt and general descriptions of the facilities to be constructed and standards.

A public hearing must be convened to discuss the petition and notification must go out to all property owners within the boundaries of the IDZ. The notification is to be paid for by the petitioners and not the governing body. Notices for the election must be sent by certified mail. No service plan shall be approved if any property owner or property owners that account for more than 50 percent of the assessed value in the IDZ objects to the IDZ. The governing body, however, can exclude property from an IDZ unless the petitioners can prove that the exclusion is not in the best interest of the IDZ.

The governing body shall find that there is sufficient or projected need for the services in the IDZ, the existing service is inadequate, the IDZ will be capable of providing economical and sufficient service, and there will be sufficient revenue to finance the service. The governing body must disapprove if evidence is not presented regarding facility and service standards compatibility, compliance with existing master plans, compliance with existing long range water quality management plans and the best interest of the community. The findings of the governing body shall be based solely upon the service plan and evidence presented at the hearing by the petitioners and any interested party.

If each governing entity approves the plan, the petition is granted and the approving authority designates an election official who will oversee the organization election. If all eligible electors signed the petition, an election is not required. Once organized with a board of directors, the IDZ becomes a quasi-municipal corporation and a political subdivision. The IDZ will have powers to enter into contracts, issue debt, and tax.

Section 22 of HB 552 outlines the powers of the IDZ. Included in the powers are the powers to sue and be sued, issue debt, enter into contracts pursuant to the Procurement code, acquire, dispose of and encumber real and personal property and to have management control and supervision of the IDZ. The IDZ also has the power to increase or decrease fees, rates, tolls, penalties or charges and pledge that revenue to revenue bonds. Specific powers include the power to erect and maintain traffic and safety controls and devices on streets and highways and at railroad crossings.

The IDZ can organize itself into subdistricts for the purpose of providing different services to the properties. The subdistricts have the same authorities as the IDZ.

Projects to be constructed may be financed from the following sources of revenue:

- Proceeds received from the sale of Bonds of the Infrastructure Development Zone;
- Money of the municipality of county contributed to the Infrastructure Development Zone;
- Annual property tax or special assessments;
- State or Federal Grants or contributions;
- Private contributions;
- User, land owner and other fees, tolls and charges;
- Proceeds of loans or advances; and
- Any other money available to the Infrastructure Development Zone by law.

There is no effective date so the effective date is June 19, 2009.

FISCAL IMPLICATIONS

The property owners within an IDZ will pay higher property taxes to finance the additional services. There may also be fees and other charges that will be imposed on all who use the facilities, including possibly roadways.

Because the additional property tax to pay for the IDZ is for debt service, there is no constitutional limitation. **The Senate Floor amendment prohibits a higher rate than the maximum operating mill rate for the local government.**

SIGNIFICANT ISSUES

Initially, based on testimony in the House Business and Industry Committee, the City of Rio Rancho is most interested in creating an IDZ. Currently, the combined state and local tax rate in Rio Rancho is 28.414 mills (\$ per \$1000 of assessed value), higher than the state average 26.62 mills.

There are already numerous special districts that would appear to provide the same mechanisms as the IDZ not to mention that counties and municipalities are charged with providing these types of services to residents. The public improvement district and the business improvement districts are two types of special districts that have similar descriptions of infrastructure to be provided and use property tax revenue for financing. Tax increment for development districts (TIDDs) use incremental revenue to finance infrastructure. Two differences are that the IDZ can overlap local government boundaries and the infrastructure envisioned by the proponents is comprehensive rather than a single project. For example, a special assessment district can be set up for a water system but generally it would be limited to that project. An IDZ involves a comprehensive “master” plan of infrastructure.

Without a particular IDZ to analyze, it is important to recognize the 3 percent limitation on property value for taxpayers who remain in their homes. In the beginning, the property values will be set when the developer sells lots or finished product but the finance plan of the IDZ must include assumptions about growth in property values consistent with the 3 percent maximum.

It is unclear as to who the IDZ will be accountable and how it will interact with the participating local governments. The provision of these types of services is generally performed by a county or municipality which is elected by all registered voters whereas the IDZ will be elected by property owners, some of whom will not be residents.

SLO (reporting on the original bill):

This act will allow development a mechanism to self finance infrastructure, independent of state and federal capital outlay money, general taxation or attachment of gross receipts tax. This offers potential SLO lessees another opportunity to plan and complete development on state trust lands, therefore increasing the value of the lands and the returns to the trust and the beneficiary. While the SLO is not a tax paying landowner, when properties are developed and transferred from state to private ownership they become eligible properties for these districts.

For example, in the case of the new high school in Rio Rancho, the SLO facilitated the school in acquisition of the site and funding for the structures was allocated by capital outlay money. There was no allocation for the delivery cost of the infrastructure to the site. The cost was ultimately borne by the City of Rio Rancho, outside their planned budget. If an Infrastructure Zone District had been in place, the developer could have secured the cost of infrastructure through the bonding process and the surrounding properties (when developed and sold) would have secured the bonds through ad valorem taxes, reducing fiscal impact on the City.

Overall any instrument that encourages development that will increase demand and value of state trust lands is a benefit to the trust and the beneficiaries.

While there are already many special districts in place to help provide these same types of services, this act will allow an opportunity for the districts to be self supporting and non-reliant on local government. The districts offer an ability to interact within multiple governmental entities and boundaries which is not currently available in the existing legislation.

This Act would help the SLO better manage the take downs in existing and proposed development of state trust lands as delivery systems of infrastructure could be in place immediately at the take down. This adds additional property to the tax roles, as well as increasing returns to the trust.

DFA has reported:

Clarification on the original Fiscal Impact Analysis, which states an IDZ will not request public funding. Both the original and the substitute for HB 552 include and Sub HB 552 Section 27, State Capital Outlay Projects Prohibited which states that an IDZ will not request nor receive state funding for a capital outlay project. This section does allow for an exception on projects financed with public monies financed through the statewide economic development finance act.

Section 32. Petition for tax reduction – annual financial estimate—budget—certification to local government division. This heading description does not accurately identify the contents of this section. The language within this section does not clarify that the IDZ will function under the oversight of LGD, or require LGD budget approval, but merely states the IDZ will ask us to certify and impose the general obligation and special assessment bond rates the IDZ has determined as necessary to operate.

Section 34 of Sub HB 552 allows for an exemption from Community Service District Act and Special District Procedures Act. Under the Special District Procedures Act a special district is defined as ‘special district means any single or multipurpose district organized or that may be organized as a local public body of this state for the purpose of constructing and furnishing any urban-oriented service which another political subdivision of the state is authorized to perform, including but not limited to the services of water for domestic, commercial or industrial uses, sewage, garbage, refuse collection and recreation, but excluding the functions or services of drainage, irrigation, reclamation, soil and water conservation or flood control; allowance of this exemption means an IDZ will not be considered a local public body & although they will receive public monies in the form of property taxes or through the statewide economic development finance act, they will be exempt from reporting to any governing authority.

PERFORMANCE IMPLICATIONS

In the original bill, AGO raised concerns about the lack of oversight and that the board and officials of an IDZ would not be subject to the many acts that provide oversight and accountability. It is unclear how the substitute has addressed these issues:

Section 22. The board can hire “agents, employees, engineers, managers, attorneys and consultants.”

There is no mention of the Governmental Conduct Act.

Section 22. The Board “may waive or amortize...connection fees...to facilitate the construction, ownership and operation of affordable housing...as affordable housing is defined by resolution adopted by the board.” There is no mention of the Affordable Housing Act.

Section 31. “The board...shall fix, levy and assesses the amounts to be raised by property taxes or special assessments...and shall cause certified copies...to be delivered to the local government division of the department of finance and administration.” There is no mention that DFA has authority to review and comment on these documents.

Section 33. “The issuance of bonds under the provisions of the Infrastructure Development Zone Act need not comply with the requirements of any other law applicable to the issuance of bonds.”

AGO has also been working on this issue as it relates to the City of Rio Rancho, representatives of which testified before the House Business and Industry Committee. The substitute does not reflect these concerns:

In November 2008, the Attorney General’s Office issued an advisory letter regarding the notice provided by the Rio Rancho City Council to create special tax assessment districts. See N.M. Att’y Gen. Advisory Letter to Senator Steven Komadina (November 20, 2008). The Rio Rancho citizens were concerned about the sufficiency of the notice and several of those issues are relevant in this bill.

- Section 4. The municipality or county shall give 20 days notice of a public hearing on the district. Is this enough time for citizens to receive notice and prepare for the hearing?
- Section 4. The proponents of the district shall give “no more than” 30 days notice of a public hearing to the citizens. Is this enough time for citizens to receive notice and prepare for the hearing?
- Section 5. The district will be rejected if fifty percent of the “total assessed value of all taxable real and personal property” file an objection “no later than ten days prior the hearing.” Is this enough time for citizens to receive notice and then file an objection?
- Section 6. A citizen who wants to be excluded from the district must file an objection “no later than” 10 days prior to the hearing. Is this enough time for a citizen to receive notice and then file an objection? The district petitioners are still given the right to argue that the citizen’s request should be denied because it “is not in the best interests” of the district.
- Section 13. “If an infrastructure development zone that was not originally approved by the governing body of a municipality becomes wholly contained within the boundaries of the planning and platting jurisdiction of a municipality by annexation, the board may petition the governing body of the municipality to accept a designation as the approving authority for the infrastructure development zone. The municipality

may accept the designation through the adoption of a resolution of approval by the governing body of the municipality.” Does that mean citizen participation is eliminated?

- Section 17. Citizens may exclude themselves from a district only with the support of “one hundred percent” of any real property owners in the area asking to be excluded. The citizens must pay “all costs of the exclusion proceedings.” The district board, not the county or municipality, “shall hear the petition” and the district board can decide whether to listen to the citizens’ concerns and grant the request.

ADMINISTRATIVE IMPLICATIONS

All approved IDZs must be filed with the Local Government Division at the Department of Finance and Administration. LGD currently does not have the staff to monitor all of the other special districts and may require additional resources. It is important that LGD recognize its role in overseeing the IDZs and other special districts.

DFA (responding to the original bill):

The creation of new districts recognized as “local governing bodies” creates an additional work-load for oversight by the Local Government Division (LGD) of the Department of Finance and Administration. LGD oversees the financial operations of counties, municipalities, special districts, (i.e. soil & water conservations districts, mutual domestic water associations) and land grants, which total to approximately 350 local governing bodies. The LGD provides this oversight in addition to numerous other mandated duties with a staff of seven executive budget analysts.

RELATIONS

HB552/HTRCS relates to HB820 which allows local governments to pledge gross receipts taxes to finance public/private partnership projects.

Also relates to HM90 which requests a study of special districts including IDZs.

TECHNICAL ISSUES

There already exist several special methods of financing infrastructure.

The AGO has raises several concerns about applicability to state oversight and accountability statutes that should be considered for possible amendment:

- Page 11, lines 21-22 read: “No service plan shall be approved if a petition objects to the service plan.” Does that mean citizens have to file a counter-petition?

There are several sections written with double-negative clauses.

- Page 15, lines 1-2 read: “The governing body may conditionally approve the service plan of a proposed infrastructure development zone upon satisfactory evidence that it does not comply with one or more of the criteria enumerated in Subsection C of this section.”

- Page 36, lines 2-11 read: “if the property to be excluded from the infrastructure development zone will be served by a proposed infrastructure development zone that is not yet organized, the board shall not order that the petition be granted until the proposed infrastructure development zone has been organized pursuant to the Infrastructure Development Zone Act, and notwithstanding any other provision of that act to the contrary, the property to be excluded may be included within the boundaries of the proposed infrastructure development zone.”
- Page 36 lines 22-25 reads: “If the board, after considering all of the factors set forth in Subsection C of this section, determines that the property described in the petition should not be excluded from the infrastructure development zone, it shall order that the petition be denied, provided that:”

POSSIBLE QUESTIONS

1. How does this affect local governments’ abilities to finance infrastructure projects?
2. Once an IDZ is created, how is it accountable to the local governments and what procedures are there for handling disputes in cases of overlapping boundaries?
3. Can this be used in conjunction with another special district such as a tax increment for development district?

NF/svb:mc

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** revenue should be adequate to fund government services.
2. ***Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
3. ***Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
4. ***Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
5. ***Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc